

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALOIS SCHAEFFELER
and PETER BROGHAMMER

Appeal No. 2001-1799
Application 09/097,655

HEARD: JULY 9, 2002

Before HAIRSTON, JERRY SMITH and BARRY, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-15, which constitute all the claims in the application.

The disclosed invention pertains to an electric appliance unit comprising an appliance and a plug-in battery pack insertable into and removable from the appliance. More particularly, the invention uses a first guiding means for

providing a coarse centering of the battery pack and the appliance housing and a second guiding means for providing a fine centering of these components.

Representative claim 1 is reproduced as follows:

1. An electric appliance unit comprising an appliance and a plug-in battery pack insertable into and removable from the appliance;

said appliance including

an appliance housing;

an electric load disposed in said appliance housing;

an electric switch disposed in said appliance housing for selectively supplying electric energy to said electric load from said battery pack; said electric switch including first electric contacts; and

a switch housing disposed in said appliance housing and accommodating said electric switch and said first electric contacts;

said battery pack including

a battery pack housing; and

second electric contacts for engaging said first electric contacts of said electric switch; said battery pack having consecutive first and second positions upon introduction thereof into said appliance housing; in said first position said first and second electric contacts initially touch one another and in said second position said first and second electric contacts are in a final operative engagement;

first guiding means for guiding and preliminarily centering said battery pack relative to said switch housing upon introduction of said battery pack into said appliance housing along a first insertion path extending to said first position to

effect an at least coarse alignment of said first and second electric contacts with one another upon reaching said first position; said first guiding means including

a first guide component carried by said battery pack; and

a second guide component carried by said appliance housing; said second guide component cooperating with said first guide component along said first insertion path during introduction of said battery pack into said appliance housing; and

a second guiding means for guiding and fine centering said battery pack relative to said switch housing upon introduction of said battery pack into said appliance housing along a second insertion path extending from said first position to said second position to effect a precise alignment of said first and second electric contacts with one another during motion of said battery pack along said second insertion path; said second guiding means including

a third guide component carried by said battery pack; and

a fourth guide component carried by said switch housing adjacent said second electric contacts; said fourth guide component cooperating with said third guide component along said second insertion path during introduction of said battery pack into said appliance housing.

The examiner relies on the following references:

Bhagwat et al. (Bhagwat)	4,835,410	May 30, 1989
Gentry et al. (Gentry)	4,900,261	Feb. 13, 1990
Champion et al. (Champion)	5,443,401	Aug. 22, 1995
Taylor	5,520,555	May 28, 1996
Liston et al. (Liston)	GB 2,225,178	May 23, 1990

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Claims 1-15 stand rejected under 35 U.S.C. § 103. As evidence of obviousness the examiner offers Bhagwat or Liston in view of Gentry, Champion or Taylor.

Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-15. Accordingly, we reverse.

Appellants have indicated that for purposes of this appeal the claims will all stand or fall together as a single

group [brief, page 4]. Consistent with this indication appellants have made no separate arguments with respect to any of the claims on appeal. Accordingly, all the claims before us will stand or fall together. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Therefore, we will consider the rejection against independent claim 1 as representative of all the claims on appeal.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825

(1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness.

Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 1.192(a)].

The examiner cites primary references Bhagwat and Liston as each teaching a coarse alignment arrangement of an appliance and a battery pack. The examiner cites secondary references

Gentry, Champion and Taylor as each teaching what the examiner refers to as telescoping engagement and coding means between the housings of two mating connectors. The examiner states that it would have been obvious to the artisan to connect the electrical connectors of either of the primary references in the manner taught by any of the secondary references to facilitate mating therebetween [answer, pages 3-4].

Appellants argue that the examiner has failed to find a teaching of the two guiding means as recited in claim 1. Specifically, appellants admit that Bhagwat and Liston each teaches a coarse centering of the battery pack in relation to the appliance housing. Appellants also admit that each of Gentry, Champion and Taylor teaches a fine centering guidance between clip-like contacts and prong-like contacts when they engage each other. Appellants argue, however, that none of the prior art references applied by the examiner teach using both a first and second guiding means together. Appellants assert that the only motivation to combine the teachings of the references in the manner proposed by the examiner comes from appellants' own disclosure. Appellants argue that neither primary reference teaches a need for a second guiding means and neither secondary reference teaches its use in combination with an electric

appliance unit as claimed [brief, pages 4-8].

The examiner responds that "[s]ince the battery pack and hand grip of the primary references each have their respective electrical connector, it clearly would have been obvious to form the housings thereof so as to mate in a telescoping arrangement, to better protect the contacts. This would inherently result in each primary reference having both coarse and fine centering as claimed" [answer, page 4].

As appellants and the examiner have argued this issue, the question before us is whether the motivation to combine either of the primary references with any one of the secondary references comes from the applied prior art or knowledge generally available to the artisan or does the motivation come from appellants' own disclosure. On this record, we agree with appellants that the rejection is not supported by the applied prior art for essentially the reasons argued by appellants in the brief.

There is no question that each of the cited prior art references teaches a single guiding means. Although the examiner refers to some of the guiding means as coarse guiding means and others of the guiding means as fine guiding means, the significance of the terms coarse and fine really have no meaning

in the applied prior art. The terms coarse and fine are relative terms which have meaning when used together. The two guiding means of the claimed invention clearly recite a preliminary centering, or coarse centering, followed by a second centering, or fine centering, of the battery pack relative to the switch housing. It is the sequential use of two guiding means which distinguishes the claimed invention from each of the applied prior art references. As argued by appellants, none of the applied prior art references teach or suggest the desirability of using two guiding means together. The only suggestion for using two guiding means as claimed comes from appellants' own disclosure.

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Therefore, we do not sustain the examiner's rejection of claims 1-15 based on the prior art applied by the examiner. Accordingly, the decision of the examiner rejecting claims 1-15 is reversed.

REVERSED

KENNETH W. HAIRSTON
Administrative Patent Judge

JERRY SMITH
Administrative Patent Judge

LANCE LEONARD BARRY
Administrative Patent Judge

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